IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2708 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHABHAI LAVABHAI RAYANI

Versus

The District Development Officer, Bhavnagar & Others.

Appearance:

MR YM THAKKAR for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1

Mr. Sudhansu S. Patel, AGP for Respondents No. 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 22/08/2000

ORAL JUDGEMENT

The petitioner, by this application under Article 226 of the Constitution of India, prays for issuance of a writ of mandamus, or certiorary or any other appropriate writ quashing and setting aside the order passed by respondent No.2 on 2nd March 1998 in Revision Application No. 70 of 1979 confirming the order passed by respondent

No.1 on 1st July 1997 disqualifying the petitioner as Sarpanch of Nesdi Gram Panchayat holding the same to be arbitrary, illegal, void and against the principles of natural justice etc.

2. The petitioner was elected as the member of the Nesdi Gram Panchayat in the year 1995 and thereafter he was also elected as the Sarpanch of the said Panchayat. The Panchayat was providing additional drinking water to the village people bringing the same from nearby places as there was grave shortage thereof. The District as well as Taluka Panchayats were rendering financial assistance to the village Panchayat so that the Panchayat might not have to face any budgetary constraint for the purpose of incurring the expenditure required to be made for the purpose of bringing drinking water from different places. The District Panchayat vide its order dated 28th May 1996 approved the supply of 14 litres drinking water per person. Pursuant to that order, Nesdi Village Panchayat undertook the task of supply of drinking water from 1st May 1996. The Panchayat had to maintain the register regarding the trips made by different tankers and the same was required to be signed by the members of the Gram Panchayat. The District Panchayat thereafter on 2nd May 1997 approved the supply of more than 15 litres. As per the fresh approval 20 litres drinking water per person was to be supplied. The District Development Officer while perusing the record before him realised that the petitioner who was the Sarpanch was not supplying the water strictly in accordance with the orders passed. There were several ongoings and malpractices and posting false entries in the registers and showing more trips than actually made he was misappropriating the amounts. The enquiry was then assigned to the Taluka Development Officer and D.D.O. was then satisfied that there was embezzlement of about Rs. 12,885/= relating to 84 trips of the tankers. A notice was then issued on 5th June 1997 calling upon the petitioner to show cause as to why necessary action under Section 57 of the Gujarat Panchayat Act (hereinafter referred to as "the Act") be not taken. The petitioner then replied the notice. After the receipt of the reply, the proceedings under Section 57 of the Act were initiated. After hearing the Sarpanch, the District Development Officer who is also the competent authority under Section 57 of the Act passed the order on 1st October 1997 removing the petitioner from the post of Sarpanch of Nesdi Gram Panchayat and further disqualifying him from contesting the election in future for a period of 5 years as per Section 30 of the Act. Being aggrieved by the order passed, the petitioner

preferred Revision Application No. 70 of 1997 which came to be dismissed by the Additional Development Commissioner on 23rd March 1998 confirming the order passed by the D.D.O. on 1st October 1997. Being aggrieved by such order, the petitioner who is removed as the Sarpanch of Nesdi Gram Panchayat, has preferred this application calling in question the legality and validity of the orders passed.

3. The learned advocate representing the petitioner submits that the principles of natural justice in this application were set at naught. Reasonable opportunity to submit was not given. The D.D.O. has in his order relied upon enquiry report submitted by the Chitnish of the District Panchayat and also the statement recorded by Talati-cum-Mantri but the copies thereof were not given to the petitioner to make necessary submission in that regard. When the petitioner was deprived of that reasonable opportunity, the order may be held to be illegal and bad in law.

4. To what extent this Court can interfere in the order passed has been maade clear by this Court in the case of Mukeshbhai Rajendrabhai Shah and Others Vs. Additional Development Commissioner - 1992 (2) G.L.H. 969 observing as under :-

> "It may be stated that the jurisdiction of the High Court under Article 226 of the Constitution is supervisory in nature. The High Court does not sit or act as an Appellate Court over the action or order of subordinate authorities or Tribunal. To put in different words the powers under Article 226 are discretionary. The same are to be exercised subject to self-imposed limitation and not arbitrarily. The High Court can exercise writ jurisdiction only in cases where fundamental rights are violated, or enforcement of a legal right is necessary, or the authority has not acted in confirmity with the principles of natural justice, or there is abridgement of procedure, or determination is on extraneous consideration, or the order is passed without jurisdiction or in bad faith, or a constitutional point is to be decided."

5. As per the above position of law, it would not be just and proper on my part to consider other contention raised on behalf of the learned advocates representing

the parties because that would amount to entering into the merits of the decision rendered and not the decision making process. The only contention that can be considered is regarding principle of natural justice alleged to have been set at naught on which the learned advocate for the petitioner has much emphasized.

6. Reading the orders of the authorities, it is clear that reliance is placed on the report of the Chitnish and the statement recorded by Talati-cum-Mantri. The copies of the report and the statement were not given to the petitioner for studying the allegations levelled against him and put-forth his possible defence he wanted to. When on query the learned advocates for the other side made an attempt to convince me, they in their swot failed in showing any thing from the record that the copies of the report and the statement were furnished to the petitioner. It is clear from such facts that the petitioner was not given the reasonable opportunity by providing him with the copies of the report as well as the statement made the base by the authorities for reaching the conclusion against the petitioner. It therefore follows that the petitioner is condemned unheard and thereby the principles of natural justice are violated. Because of such infraction, the order in question is bad in law and cannot be allowed to stand. The same is required to be quashed and a fresh hearing in the matter is required to be held affording reasonable opportunity to the petitioner to submit his case especially on the basis of the report of the Chitnish and the statement recorded by the Talati-cum-Mantri, and other materials to be relied upon.

7. On another count also, the order passed is required to be interfered with. The notice was issued 5th June 1997 but the D.D.O. has taken into account the events that happened subsequent to the date of the notice and thereby also he violated the principles of natural justice because unwary petitioner did not get the opportunity to meet with the new case introduced later on during the course of the hearing.

8. For the aforesaid reasons, this application is allowed. The order passed by the Additional Development Commissioner on 23rd March 1998 in Revision Application No. 70 of 1997, and the order passed by the District Development Officer dated 1st October 1997,removing the petitioner from the office of the Sarpanch and disqualifying him for contesting the next election, are hereby set aside and the matter is sent back to the District Development Officer, Bhavnagar for a fresh

consideration affording reasonable opportunity to the petitioner to meet with the allegations levelled against him. After affording the reasonable opportunity and providing him with the copies of the documents, on which the D.D.O. is to rely upon, appropriate order in accordance with law shall be passed. Rule is made absolute.

.....

rmr.